

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE
and
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
NORTHEAST CORRIDOR**

Case No. 325

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal in all capacities) of Mr. L. Gane, issued by letter dated September 19, 2017 in connection with alleged violation of the Carrier’s ‘Standards of Excellence’ and Workplace Violence Policy was excessive (System File NEC-BMWE-SD-5537D).
2. As a consequence of the violated referred to in Part 1 above, Claimant L. Gane shall be reinstated to service immediately with seniority unimpaired and made whole for all time lost.”

FINDINGS:

By notice dated July 6, 2017, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier’s Standards of Excellence and Workplace Violence Policy in connection with a June 20, 2017, incident in which the Claimant allegedly verbally threatened and harassed fellow Carrier employees, as well as a June 22, 2017, incident in which the Claimant allegedly engaged in a verbal and physical altercation with his foreman. The investigation was conducted, after a postponement, on September 7, 2017. By letter dated September 18, 2017, the Claimant was notified that he had been found guilty as charged. By letter dated September 19, 2017, the Claimant was notified that he was being dismissed from the Carrier’s service. The Organization thereafter filed a claim on the Claimant’s behalf,

challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence in the record supports the finding of guilt, because there is no merit or mitigating value to the Organization's assertions, because the discipline imposed is commensurate with the seriousness of the proven offenses, and because the requested remedy is not appropriate. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to satisfy its burden of proof as to both of the incidents at issue, because the Carrier subjected the Claimant to disparately harsh and discriminatory treatment, because the Carrier assessed discipline without just cause, and because the discipline imposed was excessive and disparate.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier's Workplace Violence Policy 3.12.0 when he verbally threatened and harassed co-workers, accusing them of being rats and snitches and stating that he would get them fired. The Claimant was involved in a second workplace violence incident just a couple days later when he engaged in verbal threats and a physical altercation with a foreman over work issues. The Claimant admits his wrongdoing and stated that he regrets it.

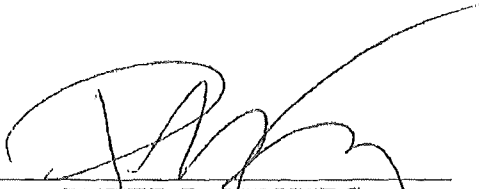
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed.

This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.


The Claimant in this case was admittedly guilty of two very serious work violence offenses. Given the nature of those offenses and the relatively short seniority of this Claimant, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, this claim must be denied.

AWARD:

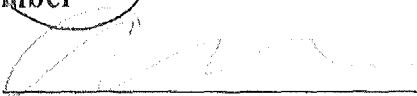
The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 12/17/2018



CARRIER MEMBER
DATED: 12/17/18